



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 30, 1991

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
Institutional Division  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR91-535

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12935.

The Texas Department of Criminal Justice -- Institutional Division (the division) received an open records request from a former division employee for all records of his employment, including all "memos, Evaluation Records, Internal Affairs 'investigation' reports, and any other printed forms." You state that you have released much of the requested information; you seek to withhold, however, portions of two internal affairs reports that you contend come under the protection of sections 3(a)(1), 3(a)(11), and 3(a)(17) of the Open Records Act. This office appreciates your efforts to mark the documents to show the portions of the reports you claim are protected.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 19A of article 4413(29cc), V.T.C.S., which governs the release of polygraph examinations, reads in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information *acquired from a polygraph examination* to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person . . . or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Consequently, the division is permitted by statute to withhold the *results* of the polygraph examination to the requestor. *See also* Open Records Decision No. 430 (1985). The mere fact that an individual has taken, or has agreed or refused to take, a polygraph examination is not, however, made confidential by article 4413(29cc); this type of information must therefore be released.

You also contend that the identities of "informer inmates" who have given statements during the course of the internal investigations are excepted from public

disclosure "consistent with Article 6252-17a, § 3(a)(1), Confidential Information, in that we believe that the section operates to protect statements of witnesses who might reasonably be believed to be the subjects of retaliation upon release of their testimony."<sup>1</sup> It appears that you intend to raise the informer's privilege aspect of section 3(a)(1) and, although you have not done so explicitly, the protection afforded to witness statements under section 3(a)(8).

To come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 391 (1983); 191 (1978). Although the "inmate informants" have reported employees' violations of division rules and regulations, the requested materials do not contain a report of a violation of a civil or criminal law; consequently the informer's privilege aspect of section 3(a)(1) is inapplicable in this instance.

Section 3(a)(8) excepts from required public disclosure "records of law enforcement agencies . . . which are maintained for internal use in matters relating to law enforcement and prosecution." The division is a law-enforcement agency for purposes of section 3(a)(8). Open Records Decision No. 413 (1984). Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the reasons for withholding names and statements of witnesses, despite the absence of a criminal prosecution, is that disclosure might subject the witnesses to intimidation or harassment. Open Records Decision No. 252 (1980) at 4. Such a possibility clearly exists here. You may therefore withhold pursuant to section 3(a)(8) the information you have marked to protect the identities of inmates.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). This office agrees that you may withhold the portions of the "Case Review Forms" that you have marked as coming under the protection of section 3(a)(11).

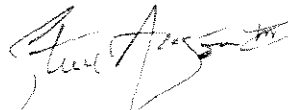
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<sup>1</sup>You do not contend, nor does it appear to this office, that the identities of the inmates in question constitute "sensitive information" as defined in the *Stipulated Modification of Section II,D and Section II,A of Amended Decree* of the *Ruiz Amended Decree*. See generally Open Records Decision No. 560 (1990).

Section 3(a)(17)(B) makes confidential "the . . . social security numbers of employees of the Texas Department of Criminal Justice." You must therefore withhold the social security numbers of all division employees pursuant to section 3(a)(17)(B). We note, however, that the requestor has a special right of access to his own social security number under section 3B of the act. *See generally* Open Records Decision No. 565 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-535.

Yours very truly,



Steve Aragon  
Assistant Attorney General  
Opinion Committee

SA/RWP/lcd

Ref.: ID# 12935  
ID# 13079

Enclosures: Open Records Decision No. 413  
Submitted documents

cc: Stuart Dial  
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